

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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SUMMARY

In these comments, the Cellular Telecommunications & Internet Association (“CTIA”) requests that the Joint Board adhere to the compromises made during the course of the Rural Task Force by opposing changes to the Commission’s High-Cost support rules. In addition, CTIA urges the Joint Board to oppose adoption of any prescriptive federal guidelines for the state ETC designation process.

As the Commission has noted repeatedly in both the *First Report and Order* and the *Rural Task Force Order*, the Communications Act mandates that all Universal Service support be distributed in a competitively and technologically neutral manner. Unfortunately, certain parties now appear intent on disturbing the findings and compromises reached in both the *First Report and Order* and the *Rural Task Force Order* by blaming wireless CETCs for High-Cost Fund growth. These allegations are without merit. Wireless CETCs continue to receive just a small slice of overall High-Cost Fund distributions. In fact, from 1999 through 2002, rural LECs received approximately \$138 in High-Cost funding for every dollar that wireless ETCs received.

The legal and policy arguments for changing the Commission’s High-Cost support rules have not changed either. In 1997, the Commission wisely decided that CETCs should receive the same level of support as rural LECs in order to foster competition in rural markets. In doing so, the Commission realized that allowing different levels of support would only serve to subsidize inefficient practices by ILECs, while discouraging new entrants that could provide better services. The rules are now spawning nascent competition in many rural areas, and should not be changed for the sole purpose of supporting inefficient rural LECs.

Furthermore, the Joint Board should also reject proposals to change the Commission's policy allowing support to all eligible residential and single-line business users. The Rural Task Force considered changes to this rule during its deliberations, and the *Rural Task Force Order* declined to take action on the issue. In the absence of any compelling reason to disturb the findings made by the Rural Task Force, the Joint Board should respect the five-year plan agreed to in the *Rural Task Force Order*, and recommend no change to the Commission's rules governing support for all eligible lines. To the extent the Joint Board believes that even minor changes to the High-Cost support rules are necessary, these changes should be studied and analyzed through creation of a second Rural Task Force that will involve all stakeholders, rather than through a limited proceeding.

Finally, the Joint Board should also oppose the adoption of permissive federal standards for ETC designations. Instead, the Joint Board should retain current rules governing state ETC designations, and remind state commissions that ETC designations should be made on a timely basis in order to bring effective competition to rural areas.

TABLE OF CONTENTS

I.	THE COMMUNICATIONS ACT REQUIRES PORTABILITY AND TECHNOLOGICALLY NEUTRAL DISTRIBUTION OF UNIVERSAL SERVICE FUNDS.....	2
II.	WIRELESS ETCs ONLY RECEIVE A VERY SMALL PORTION OF HIGH-COST FUND DISTRIBUTIONS.....	4
III.	THE CURRENT SCOPE OF ETC SUPPORT FOR CETCs SHOULD BE MAINTAINED.....	5
A.	The Joint Board Should Not Recommend Any Changes to CETC Support Calculations.....	6
B.	The Joint Board Should Recommend That the Commission Continue to Provide Support To All Eligible Residential and Business Lines.....	8
C.	Any Changes to the Current Scope of Support Should Occur Only in the Context of a Second Rural Task Force.....	9
IV.	PERMISSIVE FEDERAL GUIDELINES FOR STATE ETC DESIGNATIONS ARE NOT NECESSARY AT THIS TIME.....	10
	CONCLUSION.....	11

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The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits the following comments in response to the request of the Federal-State Joint Board on Universal Service’s (“Joint Board”) request for comment on the Commission’s rules relating to High-Cost universal service support and the Eligible Telecommunications Carrier (“ETC”) designation process.²

CTIA supports the Joint Board’s efforts to study the Commission’s rules relating to High-Cost support and the ETC designation process. In doing so, however, the Joint Board must ensure that all Universal Service support is distributed in both a competitively *and* technologically neutral manner, as required by the Communications Act (the “Act”). Specifically, the Joint Board should recommend retention of the Commission’s current technologically neutral rules governing support to wireless ETCs. Furthermore, CTIA does not believe that there is a need to establish federal guidelines for

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process, Public Notice*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) (hereinafter “Public Notice”).

state ETC designations at this time. Instead, the Joint Board should urge the Commission to again reiterate that ETC designations should be made on a timely and competitively neutral basis.

I. THE COMMUNICATIONS ACT REQUIRES PORTABILITY AND TECHNOLOGICALLY NEUTRAL DISTRIBUTION OF UNIVERSAL SERVICE FUNDS

In the Public Notice, the Joint Board requests comment on the “policy goals of portable support” and whether the “current rules promote competitive neutrality and properly balance the statutory goals of competition and universal service.”³ Furthermore, the Joint Board also requests comment on whether the current rules, in supporting multiple entrants, are “consistent with the purpose of section 254 of the Act.”⁴

As an initial matter, CTIA notes that the goal of competitively neutrality and portability of USF support are not just Commission policy goals. Rather, they are Congressional mandates. As the Rural Task Force noted during the course of its deliberations, “Section 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service.”⁵ The Commission noted this statutory mandate in the *First Report and Order*, when it stated that “universal service mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor

³ Public Notice at 8-9.

⁴ *Id.* at 9.

⁵ Rural Task Force, White Paper 5: Competition and Universal Service, at 8 (rel. Sept. 2000) (available at <http://www.wutc.wa.gov/rtf>) (hereinafter “White Paper 5”).

nor disfavor one technology or another.”⁶ This concept was also reiterated in the *Ninth Report and Order*, where the Commission reiterated that “the same amount of support . . . received by an incumbent LEC should be fully portable to competitive providers.”⁷

The Courts have also ruled that portability and technological neutrality are compelled by the 1996 Act. In *Allenco Communications, Inc. v. FCC*, the United States Court of Appeals for the Fifth Circuit stated that the Universal Service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.”⁸ Furthermore, the Fifth Circuit also pointed out the most critical aspect of the Universal Service program in a competitive environment: “to benefit the customer, not the carrier.”⁹ Accordingly, the mandate of the Joint Board in this proceeding should not be lost in a debate over whether there should be any limitations on competitive ETC access to available USF support – the 1996 Act plainly states that all support must be portable. Instead, this proceeding should be used to further refine the current rules, and ensure that the competitively and technologically neutral support is available to all ETCs in a timely manner.

⁶ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801 (1997) (hereinafter “First Report and Order”).

⁷ *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20479 (1999) (hereinafter “Ninth Report and Order”).

⁸ 201 F.3d 608, 616 (5th Cir. 2000).

⁹ *Id.* at 621.

II. WIRELESS ETCs RECEIVE ONLY A VERY SMALL PORTION OF HIGH-COST FUND DISTRIBUTIONS

In the Public Notice, the Joint Board requests information on how “development of competition in high-cost areas” has impacted the Universal Service Fund.¹⁰ In addition, the Joint Board also requests comment on how “the growth in support for competitive ETCs compare[s] to the growth in support of other ETCs (i.e., incumbent LECs).”¹¹ In general, wireless CETCs have had little impact on overall High-Cost Fund growth in the past two to three years, and will likely have a minimal impact in the near future.

According to Universal Service Administrative Company statistics, wireless ETCs received less than \$1.5 million in High-Cost support in 2000.¹² Rural LECs, however, received almost \$2.03 billion in High-Cost funding during this period.¹³ By 2002, High-Cost support for rural LECs had ballooned to almost \$3 billion,¹⁴ with wireless CETCs only receiving approximately \$45 million in High-Cost support that year.¹⁵ Furthermore, even the most aggressive projection of wireless ETC growth provided in a January 2003 study conducted for the Organization for the Promotion and

¹⁰ Public Notice at 6.

¹¹ *Id.* at 7.

¹² See Letter from Linda J. Miller, Deputy General Counsel, Universal Service Administrative Company to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (dated March 25, 2003) (hereinafter “USAC Wireless CETC Support Summary”) (attaching a summary of “Wireless CETC High Cost Support” for the years 1999 through 2002).

¹³ See Universal Service Monitoring Report, CC Docket No. 98-202 (October 2002).

¹⁴ See *id.*

¹⁵ See USAC Wireless CETC Support Summary at 2.

Advancement of Small Telecommunications Companies (“OPASTCO”) states that wireless ETC funding will rise to, at most, approximately \$102 million in 2003, compared to approximately \$3.2 billion in funding for the rural LECs.¹⁶

As the facts clearly show, wireless CETCs are not a significant factor in the growth of the High-Cost Fund, or the increased demand on overall USF funds. In fact, during the period from 1999 through 2002, *rural LECs received approximately \$138 in High-Cost funding for every dollar that wireless ETCs received.*¹⁷ Therefore, any Joint Board recommendations should focus on ways to foster competition in rural areas for the benefit of consumers, rather than punitive measures that will hurt the development of nascent competition.

III. THE CURRENT SCOPE OF ETC SUPPORT FOR CETCs SHOULD BE MAINTAINED

The Public Notice requests comment on a number of proposals that could substantially limit High-Cost Fund support to competitive Eligible Telecommunications Carriers (“CETCs”). Specifically, the Joint Board requests comment on a number of possible changes to the methodology for calculating support for ETCs in competitive

¹⁶ See Organization for the Promotion and Advancement of Small Telecommunications Companies, UNIVERSAL SERVICE IN RURAL AMERICA: A CONGRESSIONAL MANDATE AT RISK (January 2003) (hereinafter “OPASTCO Study”), at A-3, A-4.

¹⁷ This figure is derived by taking the total amount of High-Cost support from 1999 through 2002 (approximately \$9,483,042,486), subtracting wireless CETC disbursements, wireline CETC distributions and nonrural High-Cost support, and then dividing the remainder by total wireless CETC disbursements (approximately \$62,931,135). See Universal Service Monitoring Report at Table 3.13 (detailing total High-Cost support for years 1999 through 2001); Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2003 (filed Jan. 31, 2003) (detailing total 2002 High-Cost support); OPASTCO Study at A-4 (detailing wireline CETC funding); USAC Wireless CETC Support Summary at 2 (detailing wireless CETC support for years 1999 through 2002).

areas.¹⁸ In addition, the Joint Board also requests comment on a proposal to limit High-Cost support to a single connection to a residential or single-line business user.¹⁹ As noted above, wireless ETCs receive only a fraction of total High-Cost funding. Any changes that restrict CETC support will almost certainly undermine rural competition and the mandate of Section 254, and will only have a minimal impact on High-Cost Fund demand. Accordingly, the Joint Board should recommend that the Commission retain the current rules regarding CETC support calculations and funding for all eligible lines.

A. The Joint Board Should Not Recommend Any Changes to CETC Support Calculations

The Joint Board requests specific comment on whether the Commission should “calculate support for a competitive ETC based on its own costs.”²⁰ Furthermore, the Joint Board also requests comment on the “competitive effects of paying different amounts per ‘customer’ or per ‘line’ to each ETC.”²¹

In 1997, the Commission wisely decided to provide CETCs with the same level of support as rural LECs in order to foster efficient competition in rural markets.²² In the *First Report and Order*, the Commission rejected assertions that providing support to CETCs based on rural LEC costs somehow gives CETCs “preferential treatment.”²³ In doing so, the Commission noted while a CETC may have different costs than an

¹⁸ See Public Notice at 8-12.

¹⁹ See *id.* at 12-14.

²⁰ See *id.* at 9.

²¹ See *id.*

²² See First Report and Order, 12 FCC Rcd at 8932-33.

²³ *Id.* at 8933.

incumbent LEC, the CETC – just like a rural LEC – must use all of its support only for the provision and maintenance for facilities that provide supported service.²⁴

Furthermore, the Commission also noted that the “presence of a more efficient competitor will require the ILEC to increase its efficiency or lose customers.”²⁵

For example, under the current rules, if an ILEC receives \$15 in support per month, then the CETC operating in the same area is also entitled to receive \$15 per month in High-Cost support. This ensures that both providers are treated equally in the competition for USF funds as required by the Act. In addition, it also provides an incentive for new providers to enter markets where they can provide services more efficiently, while also encouraging ILECs to be more efficient.

On the other hand, if an ILEC receives \$15 per month in support (which may be based partially on embedded costs that have no relation to current costs), and the CETC only receives \$7.50 in support, it would essentially require the CETC to have costs at least \$7.50 per month less than the ILEC in order to compete. In addition, it would also require consumers paying into the Universal Service Fund to subsidize inefficient practices by ILECs, while discouraging new entrants that could provide better services.

As recent USAC statistics indicate, the Commission’s rules have generally helped spur competition in rural areas by increasing the number of CETCs receiving High-Cost support from just 2 in 1999 to 29 in 2002.²⁶ Changes to the CETC support levels, however, would likely skew market-based signals in these markets, and seriously damage the continued development of competition in rural markets. The Commission has had

²⁴ See *id.*

²⁵ *Id.*

²⁶ See USAC Wireless CETC Support Summary at 2.

two opportunities to review and change these rules – in the *First Report and Order* and in the *Rural Task Force Order* – and has declined to make changes both times in order to preserve and maintain competition in rural markets.²⁷ Accordingly, the Joint Board should recommend that the Commission retain its current rules mandating support parity for CETCs, and reject the alternate methodology proposals discussed in the Public Notice.

B. The Joint Board Should Recommend That the Commission Continue to Provide Support to All Eligible Residential and Business Lines

The Public Notice also requests specific comment on “whether the goals of Section 254 would be better served if support were limited to a single connection to the residential or single-line business end user – whether provided by the incumbent or a competitive ETC.”²⁸ This issue was discussed in depth during the deliberations of the Rural Task Force. In White Paper 5, for instance, the Rural Task Force discussed the competing arguments for and against the use of subsidies for all lines in rural areas that receive High-Cost funds.²⁹ In the *Rural Task Force Order*, however, the Commission

²⁷ See First Report and Order, 12 FCC Rcd at 8931 (“In order not to discourage competition in high cost areas, we adopt the Joint Board’s recommendation to make carriers’ support payments portable to other eligible telecommunications carriers prior to the effective date of the forward-looking mechanism.”); *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 0-256*, 16 FCC Rcd 11244, 11294 (2001) (hereinafter “Rural Task Force Order”) (noting that the Commission previously rejected the argument that the “rules should be modified to provide support to competitive carriers based on their own costs” and stating that the Commission “decline[s] to reconsider it at this time”).

²⁸ See Public Notice at 13.

²⁹ See White Paper 5, at 23-24 (noting that “providing universal service support for only primary lines could create a market abnormality in that urban consumers would have

declined to modify the rules promulgated in the *First Report and Order*, which allow High-Cost funding for all lines in eligible rural areas. Accordingly, since the *Rural Task Force Order*'s framework was intended to remain in place for five years from its implementation on July 1, 2001, CTIA believes that this should be a settled issue.³⁰

Forgetting the Rural Task Force's deliberations, some parties now desire to revisit this issue under the guise of "excessive" High-Cost Fund growth, notwithstanding the various compromises that were reached in the *Rural Task Force Order*. As indicated earlier, however, CETCs still make up a very small portion of the total High-Cost demand. In addition, there has been no showing that second line support received by either rural LECs or CETCs has caused "excessive" High-Cost Fund growth. Accordingly, the Joint Board should respect the deliberations of the Rural Task Force, and recommend no changes to the current rules governing support for all lines in rural, High-Cost areas.

C. Any Changes to the Current Scope of Support Should Occur Only in the Context of a Second Rural Task Force

As detailed above, CTIA does not believe that any changes are warranted at this time to Commission rules governing support to CETCs. However, to the extent that the Joint Board decides that any changes to the High-Cost support program are necessary, the

access to as many affordable lines as needed, but rural consumers would have access to only one affordable line").

³⁰ See Rural Task Force Order, 16 FCC Rcd at 11250 ("We find that the Rural Task Force's proposed framework, with certain modifications, shall remain in place for five years and implementation shall begin as of July 1, 2002."). CTIA also notes that the "methodology for determining the location of a line served by a mobile wireless provider" was discussed in-depth in the *Rural Task Force Order*. See Public Notice at 12; Rural Task Force Order, 16 FCC Rcd at 11314-16. Accordingly, CTIA believes that this issue was also appropriately resolved in the context of the *Rural Task Force Order*, and does not require further review in the context of this proceeding.

Joint Board should urge the Commission to create a “Second Rural Task Force” so that proposed changes can be reviewed and fully discussed by all stakeholders. During the two-year term of the first Rural Task Force, that group engaged in extensive deliberations, including “12 meetings and 28 conference calls, as well as numerous sub-group calls.”³¹ Many of the issues involved in the Public Notice involve the same or similar issues as those discussed during the first Rural Task Force. Therefore, any recommendations to modify the work of the first Rural Task Force should appropriately take place in the context of a second, broad-based study group, as opposed to a more limited notice and comment process that may not involve all stakeholders or provide sufficient time to study the impact of proposed changes.

IV. PERMISSIVE FEDERAL GUIDELINES FOR STATE ETC DESIGNATIONS ARE NOT NECESSARY AT THIS TIME

Finally, the Public Notice requests specific comment on whether the Joint Board should recommend “permissive federal guidelines for states to use in designating ETCs pursuant to Section 214(e)(2).”³² Under Commission regulations, carriers seeking ETC designations from state commissions already must prove, among other things, that all support received will be used for USF-supported services, that services will be advertised throughout the designated service area, and that an ETC designation will serve the overall public interest.³³ CTIA believes that these regulations provide sufficient guidance for states to make ETC designations without unduly infringing on state commissions’ ability to make individualized public interest determination for specific service areas.

³¹ Rural Task Force Order, 16 FCC Rcd at 11253.

³² Public Notice at 15.

³³ See 47 C.F.R. § 54.201.

Accordingly, CTIA does not believe that additional federal guidelines are necessary at this time. Instead, CTIA urges the Joint Board to recommend that the Commission retain its current rules, and again remind state commissions that ETC designations should be made on a timely basis.

CONCLUSION

For the aforementioned reasons, CTIA requests that the Joint Board recommend no changes to current Commission rules governing CETC support or the number of lines supported in High-Cost areas. In addition, CTIA requests that the Joint Board oppose the adoption of permissive federal standards for ETC designations at this time.

Respectfully submitted,

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